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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of  
SORENSEN RESEARCH AND  
DEVELOPMENT TRUST,

Plaintiff,

v.

METABO CORPORATION, a Delaware  
Corporation; METABOWERKE GMBH  
A German Corporation; and DOES 1-100,

Defendants.

Case No. 08-cv-0304 BTM CAB

**NOTICE OF MOTION AND  
DEFENDANT'S MOTION TO STAY  
THE LITIGATION PENDING THE  
REEXAMINATIONS OF U.S.  
PATENT NO. 4,935,184**

Date: June 20, 2008  
Time: 11:00 a.m.  
Courtroom: 15  
Hon. Barry Ted Moskowitz

NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT

NOTICE IS HEREBY GIVEN that on June 20, 2008 at 11:00 a.m. or as soon thereafter as the matter may be heard by the above-entitled Court, located at 940 Front Street, San Diego, CA 92101-8900, defendant Metabo Corporation, ("Metabo"), will and hereby does respectfully move for a stay of the above-captioned proceeding pending the ongoing United States Patent & Trademark Office ("PTO") reexaminations of the patent in suit, U.S. Patent No. 4,935,184 ("the '184 patent"). Defendant's counsel conferred with plaintiff's counsel to seek plaintiff's assent to such a stay prior to filing this motion but plaintiff does not assent to such a stay.

This Court already has stayed several related cases involving the '184 Patent based on the fact that the '184 Patent currently is in reexamination before the PTO.

1 The same considerations that apply to those cases apply equally to the instant case. Thus, the  
2 parties are at the very beginning of this litigation. Defendant's answer is being filed at  
3 approximately the same time as defendant's motion to stay and no discovery has been taken. Under  
4 such circumstances, it would be inefficient to establish a discovery schedule, conduct discovery or  
5 hold a Markman hearing or trial since the reexamination may either eliminate claims entirely or  
6 substantially change them.  
7

8 Further, a stay will not prejudice plaintiff in any way. Plaintiff's patent has lapsed and as a  
9 result, plaintiff will be seeking only damages in this matter. As a result, plaintiff can be adequately  
10 compensated through monetary damages if plaintiff ultimately prevails in this matter. Defendant  
11 will comply with its obligations to preserve evidence and as a result there is no prejudice.  
12

13 Finally, a stay may simplify the issues in question in the trial of this case. If some or all of  
14 the patent claims presently in the reexamination are found invalid by the PTO, this Court will not  
15 need to address these claims in any way. To the extent that claims survive reexamination, those  
16 claims may be modified or statements made by plaintiff during the reexamination process may be  
17 pertinent to the claim construction.

18 This motion is based on this Notice of motion and Motion, the accompanying  
19 memorandum of law, the Declaration of Jeffrey D. Lewin (all of which have been filed and served  
20 concurrently with this Notice of Motion), on the papers and records on file in this action and related  
21 actions, and on such other and further oral and documentary evidence as the Court may consider at  
22 the time of any hearing.

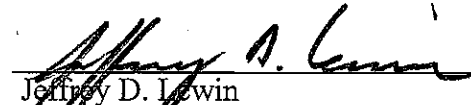
23 For the reasons set forth in greater detail in the supporting memorandum, defendant  
24 respectfully requests that the Court order this case stayed pending completion of the PTO's ongoing  
25 reexaminations of the '184 patent.  
26  
27  
28

Respectfully submitted:

Dated: April 7, 2008

METABO CORPORATION

By:

  
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